EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ADREA, LLC,

Plaintiff,

v. 13 Cv. 4137 (JSR)

BARNES & NOBLE, INC.,
BARNESANDNOBLE.COM LLC, AND
NOOK MEDIA LLC,

Defendants.

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October 7, 2014
10:00 a.m.

Before:

HON. JED S. RAKOFF

District Judge

APPEARANCES

PROSKAUER ROSE LLP
Attorneys for Plaintiff
BY: STEVEN M. BAUER
COLIN CABRAL
BRENDAN COX

ARNOLD & PORTER LLP
Attorneys for Defendants
BY: LOUIS S. EDERER
ALI R. SHARIFAHMADIAN
MICHAEL A. BERTA
YUE-HAN CHOW

Q. Were you involved in the creation of ADREA?
A. Yes, I was.
Q. When was ADREA ultimately informed?
A. ADREA was formed I believe in 2010.
Q. Again briefly, if you could please tell the jury how you came up with the idea to form the company.
A. I don't want to take too much time. There was a guy at Discovery Networks called Jay Rosenstock, who still works there, who used to work at Sony. He is an old friend of mine. He called me in the summer of 2009, right after he had moved from Sony to Discovery. His job at Discovery was to handle business strategy and what they call corporate development.

One of his jobs was to deal with this patent case that Discovery had filed against Amazon that was using the patents of the founder of Discovery Networks, guy called John Hendricks, that were on ebooks that John had filed in the mid '90s. Discovery is a content company. They make shark documentaries and things like. Jay had been asked by his boss to see if there was a way to use this patent portfolio that he had invented strategically.

Jay knew that I knew a lot about patents, and he knew that I worked with people at Sony and Philips spending a lot of time on research. Sony had an ebook reader in the market at that time. He called me up and said, hey, look --

MR. EDERER: Objection, your Honor.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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ADREA, LLC,

Plaintiff,

v. 13 Cv. 4137 (JSR)

BARNES & NOBLE, INC., BARNESANDNOBLE.COM LLC, AND NOOK MEDIA LLC,

Defendants.

----------x

October 15, 2014
9:50 a.m.

Before:

HON. JED S. RAKOFF

District Judge

APPEARANCES

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computer. If they were very adventurous they would take a very strange device that would exist and they would try and connect it with a cord and download it on that device.

Q. What was that device called?

A. The device that Barnes & Noble sold was called a Rocket Reader.

Q. This was in 1999?

A. 1999-2000-ish.

Q. In that time period were publishers putting their books in electronic form?

A. Not in a substantial way.

Q. When did ebooks start becoming more prevalent?

A. When Amazon introduced the Kindle.

Q. When was that, if you know?

A. In 2007.

Q. Moving now to the third paragraph, where it starts, "In October 2009," could you read that for the jury, please.

A. Yes. "In October 2009 Barnes & Noble launched Nook" --

MR. CABRAL: Plaintiff would lodge an objection to the extent defense counsel is having the witness read the document and asking questions unrelated to the document. More so the fact that we are spending a lot of time reading the document into evidence at this point.

THE COURT: Overruled.

A. "In October 2009 Barnes & Noble launched Nook, the

Q. Was competition a risk?
A. Incredibly fierce competition was a risk.
Q. I turn your attention to page 25 of that document in front of you. Can you read for us towards the bottom of the page the first full paragraph, the last four sentences.
A. "In addition, Barnes & Noble faces competition from the expanding market for digital content and hardware, including, without limitation, electronic books, or ebooks, and ebook readers and digital distribution of content. New and enhanced technologies, including new digital technologies and new web services technologies, may increase Barnes & Noble's competition. Competition may also intensify as Barnes & Noble's competitors enter into business combinations or alliances or established companies in other market segments expand into its market segments. Increased competition may reduce Barnes & Noble's sales and profits."
Q. What competition was contemplated at launch?
A. The core competitor was Amazon.
Q. Prior to the introduction of ereaders, how, if at all, did Barnes & Noble compete with Amazon?
A. Amazon was the first online book seller of a substantial manner. They were the most significant competitor that we had from the very beginning.
Q. You testified earlier that Amazon's Kindle was launched in?
A. I think it was July -- it was 2007.

are talking about Dr. Wang.

THE COURT: So it sounds to me like we may well finish the testimony on Monday, in which case we would have a charging conference on Monday. I will get you over the weekend a draft of my charge. You previously submitted your proposed requests to charge. If there are any further requests, they need to be submitted no later than 5 p.m. on Friday. Any requests to charge not submitted by 5 p.m. on Friday will not be considered under any circumstances whatsoever.

So we will have summations probably on Tuesday morning. How long does plaintiff want for summation?

MR. CABRAL: One hour, your Honor.

THE COURT: Defense counsel?

MR. EDERER: That will be fine, your Honor.

THE COURT: All right.

Now, we are going into a sealed proceeding now. So we will take a five-minute break. You can leave all your stuff on the table, but you physically and in the people in the audience also have to clear out.

MR. EDERER: May I raise one issue?

THE COURT: Yes.

MR. EDERER: Yesterday I mentioned to your Honor that there were two of our motions in limine.

THE COURT: Yes. I'm sorry. I will look at those tonight.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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ADREA, LLC,

Plaintiff,

v. 13 Cv. 4137 (JSR)

BARNES & NOBLE, INC., BARNESANDNOBLE.COM LLC, AND NOOK MEDIA LLC,

Defendants.

----------x

October 20, 2014
10:05 a.m.

Before:

HON. JED S. RAKOFF

District Judge

APPEARANCES

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expired, damages may only be awarded for the period March 2, 2012, through December 9, 2012."

THE COURT: OK. I have no problem with adding that language. I think it should go at the end of that instruction, now that I look at it. Do you have an objection?

MR. CABRAL: We would prefer it be simpler, your Honor, and say the damages period for the '851 patent or damages should be awarded to the extent they are for the '851 patent from March 29, 2012, to December 9, 2012.

THE COURT: If we are going to do that, we should do it for all three.

MR. CABRAL: There is no end period on the other patents, as they have not expired yet, your Honor.

MR. EDERER: But there is an end period because it is the date today or tomorrow. It would be November 2009 through to date.

THE COURT: I don't mind your wording as long as it covers all three. Why don't you jointly get me that wording by certainly no later than 7:30 tonight. I'll add something to that effect at the bottom of the compensatory damages instruction.

MR. EDERER: Your Honor, if I may, we had also proposed an instruction, which you didn't accept, with respect to the start date for the other two patents. We had a marking issue which was raised on summary judgment. You granted with

respect to the '851 but not with respect to the '501 and '703 because you said there were issues of fact. It has to do with the question of marking and whether or not the patents are being practiced and whether there was marking.

There was no dispute that there was no marking. The dispute is whether or not the patents were being practiced. If we are right about that and the jury finds that the patents were being practiced, then we are entitled to push forward the start date for those two patents as well to March 29, 2012, because that is the date --

THE COURT: What is the instruction you want?

MR. EDERER: The instruction we are asking for is an instruction which asks the jury to determine --

THE COURT: No, I want the words.

MR. EDERER: It's a fairly lengthy charge.

THE COURT: Yes, it was. That's why I wasn't going to give it.

MR. EDERER: We can cut it down. But I think we are entitled to that.

MR. CABRAL: Your Honor, on this issue defendants did not identify any articles they thought were covered by the '501 or '703 patents during discovery. They never identified any patent articles that we would then have to go back and establish were not covered by the patents. They waived any argument regarding marking.

On this issue, your Honor, we wrote a letter to defense counsel on October 4th laying out our position very clearly and the case law supporting our position, which has not been responded to. I am happy to provide your Honor with a copy of that letter.

THE COURT: I don't know about that. I'm certainly not going to give the lengthy instruction. If by 7:30 tonight you want to propose a short instruction that can be added to this general instruction on compensatory damages, I will consider it, keeping in mind the objections just stated. If you want to submit something right after you receive it as to further objections or anything like that, I will look at that as well. But I need to have it by 7:30 tonight because we have to put this to bed tonight.

I shouldn't say we are putting it to bed tonight with one exception that anything in motions made at the close of all the evidence that affects the charge, obviously that will be taken account of.

Turning to instruction number 15, any objections or additions, etc., from plaintiff's counsel?

MR. CABRAL: Your Honor, one moment. I seem to have lost it in the pile of paper here.

No problem, your Honor.

THE COURT: From defense counsel?

MR. EDERER: Which one, your Honor?

is overruled.

MR. EDERER: Your Honor, the second thing we are proposing is that the damages be divided up patent by patent, which is consistent with the way --

THE COURT: They are going to get that instruction that we just discussed about the date and all like that. I appreciate the Court of Appeals, to argue your position for a moment, always says give us a verdict with 47 special interrogatories so that we can make sure that every single issue is decided permanently here and we don't have to send it back for a new trial, their theory being that they are somehow saving the district court or maybe a future Court of Appeals panel some problem. What I think is lacking from that analysis is the fact that in every case, but certainly in a patent case, to complicate the verdict form in the way that that kind of approach entails is actually to just create a recipe for confusion rather than clarity.

If the jury carries out the Court's instructions of law as to how to calculate damages, they will be able to arrive at damages -- if, for example, they find there is infringement on one patent but not on two others -- that will reflect that fact.

Will the Court of Appeals necessarily know that fact, and therefore, if they find that there is a reason for over-turning one of those infringement determinations or something

like that, will they know how to reserve at damages? No, they won't, and that is a shame. But that problem is more than offset by the need to make sure that the jury is not placed in a position of endless difficulty, confusion, and angst. So, that request is denied.

MR. EDERER: You have our position on that.

This one I think you may actually agree with us on, your Honor.

THE COURT: I have agreed with you on so much. It is hard to believe what an agreeable person I am. Go ahead.

MR. EDERER: What you have now as paragraph 3(b) in your verdict form, it should have a "yes" and a "no" box underneath it.

THE COURT: Yes, you are right. Of course, if this were an SEC case, we could put yes, no, or neither admit nor deny.

Anything else?

MR. BAUER: Just a couple of procedural issues regarding tomorrow, your Honor. The jury has not touched the patents yet. They won't even know where to find the claims in the back.

THE COURT: I asked that you prepare an appendix. I think my law clerk sent you an email to this effect. In the instructions under infringement, I specifically say attached to this set of instructions is an appendix with all the claims.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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ADREA, LLC,

Plaintiff,

v. 13 Cv. 4137 (JSR)

BARNES & NOBLE, INC., BARNESANDNOBLE.COM LLC, AND NOOK MEDIA LLC,

Defendants.

----------x

October 21, 2014
10:05 a.m.

Before:

HON. JED S. RAKOFF

District Judge

APPEARANCES

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SARAH BRACKNEY ARNI
SUSAN L. SHIN

THE WITNESS: I did, your Honor.

THE COURT: Go ahead, counsel.

BY MR. EDERER:

Q. How did you go from the lump sum payments that were made in the Amazon agreement to a per unit royalty rate as you just described?

A. I had to convert them to a per unit by taking into account actual and estimated sales that I believe ADREA and Amazon would have considered when they entered into that agreement.

Q. Why did you convert these payments to a per unit rate?

A. Well, I believe it's the best way really to account for the significant size difference between Amazon and Barnes & Noble and the fact that Amazon sales of licensed products were much, much greater than Barnes & Noble sales of licensed products.

Q. So what is the relevance of the actual amount of money paid by Amazon to ADREA?

A. I think it's only relevant in the context of the number of sales, actual and expected sales.

Q. Now, what years of Amazon sales did you look at?

A. I looked at historical sales that covered the period 2008 through 2011.

Q. What data did you use to determine Amazon sales for the years 2008 to 2011?

A. I utilized actual Amazon -- actual sales data from Amazon's own business records.

Q. For what period of time?
A. For 2008, 2009, and 2010. And then there were partial year estimates for 2011.
Q. Did you use anything else in connection with your analysis of data of Amazon sales for the year 2011?
A. Yes. In order to get a better handle on 2011 full year sales, I collected information or I obtained information from a market research firm called IDC, which is in the business of analyzing various markets and putting that type of data together. So I obtained that information for 2011.
MR. EDERER: Can we put up DDX 1008, please?
Q. Now, we have a slide, Mr. Barnes. What are we looking at here?
A. Well, this is the sales data that we were just discussing for 2008, which is when Amazon first introduced its Kindle products, through 2011.
Q. According to this table, the estimated actual sales for 2011 that you used reflected a pretty big jump over the previous year. Do you see that?
A. I do.
Q. Did you do anything to test the reliability of the IDC data that you used as estimated actual sales for 2011?
A. Yes, I did. As I mentioned previously, I did have from Amazon's own records estimates.
MR. BAUER: Objection. Outside the scope.

downward pressure on the rates. By not making a downward adjustment in the rates that I derived from the Amazon agreement, I believe my calculations have been very conservative.

Q. Let's talk about the damages calculations themselves, or the royalty rate calculations, if you will. Could you briefly explain how you actually came to those 8-cent, 4-cent, and 2-cent numbers before we go through this slide.

A. Sure. I think I already did that when I explained how I took the unit sales, both historical and projected, and I divided those into the total payments that were made under the Amazon agreement, accounting for the discount factor that I discussed earlier. Once I did that, I came up with the 8 cents for the Discovery portfolio, which again I attributed 100 percent to the '851 and the '501. When you multiply that 8 cents to the unit sales that were made by Barnes & Noble through June 30, 2014, you get a total damages figure of 569,306.

Q. That's for the '851 and '501 together, right?

A. That is.

Q. The starting point for this calculation is December 1, 2009, is that right?

A. It is. But remember the '851 is only -- the damages period for the '851 is only that 8½-month period from March 29, 2012, to December 9, 2012. All other periods in that date range at

the top there, the rate is only 4 cents. For those other periods, only the '501 would be included in the calculation.

Q. You did a calculation for the '501 only at 4 cents for the period indicated at the header of the slide, correct?

A. That's correct. For the entire period '501 only at 4 cents, it's $478,099.

Q. Then if you take the '501-only number and subtract it from the '851-'501 together number, what does that come out to?

A. The difference is approximately $91,000 for the '851 by itself.

Q. We see also some dates in parentheses next to the words "'851 only." Can you explain the significance of those dates.

A. Yes. Those are the same dates that I have been discussing earlier, March 29, 2012, to December 9, 2012. That's the 8½-month period for which damages may apply if the '851 patent is found to be valid and infringed.

Q. Then there is a number at the bottom of that slide for the '703 patent only. Do you see that?

A. Yes.

Q. Can you explain how you calculated that number.

A. That is for the entire date range at the top. That is all the units that were sold during that time period multiplied by the 2-cent royalty for the '703 patent.

Q. In your analysis, Mr. Barnes, are these the maximum amounts of damages that would be awardable for these three patents for

the period that you calculated them?
A. Yes. You would not want to add them all together, because there is some overlap between a couple of them, but yes.
Q. Explain that overlap.
A. If we took all three patents, for example, said all three are valid and infringed, then you would take the top line and the bottom line.
Q. The 569 and the 239?
A. Right. I think that is roughly $808,000.
Q. If you did the same thing with each patent by itself, the 478, the 91, and the 239, you would come out with that same $808,000 number?
A. That's correct.

MR. EDERER: No further questions, your Honor.

THE COURT: Cross-examination.

MR. BAUER: Thank you, your Honor.

CROSS-EXAMINATION

BY MR. BAUER:

Q. Hello, Mr. Barnes.
A. Hello.
Q. You spoke a lot about economics. You don't have any degree in economics, do you?
A. My degree is in accounting.
Q. Before you were retained here, you had no particular experience in the ereader space, correct?

MR. BAUER: Thank you, your Honor.

(Jury not present)

THE COURT: Mr. Barnes, you can step down. During your cross you should not discuss the case with anyone.

THE WITNESS: Yes, your Honor.

(Witness not present)

THE COURT: With respect to the charge, let me ask plaintiffs first, are you going to be calling Mr. Wang or not?

MR. CABRAL: We do plan on calling Mr. Wang, your Honor.

THE COURT: Really? Why?

MR. CABRAL: Just for a brief rebuttal to some of the validity opinions.

THE COURT: Brief rebuttal to?

MR. CABRAL: To some of the validity opinions that were rendered by Dr. Neuman.

THE COURT: The only typo I found was on page 14. I'll fix it. It was "some meaning." It should have been "same meaning."

With respect to the one and only issue that I am going to hear argument on, the one and only issue I'm going to hear argument on, which is the last paragraph of instruction number 12 on compensatory damages and the related issue of marking, I'll start with the marking part. I still have not heard any evidence on the issue of marking. Unless someone from the

defense can tell me there is such evidence, we are not going to say one word in these instructions about marking.

MR. EDERER: Your Honor, are you asking me?

THE COURT: You're the defense last time I checked.

MR. EDERER: I'm sorry. I didn't hear you. The issue here, your Honor, is with respect to the issuance of the license, such as the Amazon license in this case. There was also a license issued to Sony. The issue is did the plaintiff demonstrate that there was marking and/or that if there was no need to mark because the product did not practice the patent.

The case law is clear that at this point in time if there is a license, such as the Amazon license, the burden goes to the plaintiff to demonstrate either that the product was marked or, if it wasn't marked, that the products did not practice the patent. That was the premise of the summary judgment motion in this case. That is the reason why your Honor ruled in favor of Barnes & Noble with respect to the '851 patent. You found that --

THE COURT: Excuse me. If you're right about that, then there is still no instruction on the issue of marking. My question to you was, was there any evidence of marking? With respect to marking, any evidence about that issue at all? The answer is there was none.

If you're right about the burden, then the instruction in the present way it reads follows. If you're wrong about the

burden, then we have to put a different date on. But neither way do we have to have any of this gobbledygook about marking.

MR. EDERER: Understood, your Honor.

THE COURT: Let me hear now from plaintiffs. What I understand defendant to be arguing is that because Amazon, after the settlement, had a license to utilize these patents and the marking section, what is it again --

MR. CABRAL: 287, your Honor.

THE COURT: Thank you. -- kicked in so that your damages, if there was no marking, would be from the time of actual notice, which was March 29, 2012. If they are wrong about that kicking in, then it is from the date of infringement, which is December 1, 2009 or two-thousand --

MR. CABRAL: 2009, your Honor.

THE COURT: 2009, yes. The only question now, we are down to one little issue, which is on the very last line of this: Should the date be March 29, 2012 or December 1, 2009? What is your argument as to why the statute did not kick in?

MR. CABRAL: Your Honor, what we are talking about here is a short window between November 2011, which is the execution of the Amazon license, and March 2012, which is the date of actual notice. You're talking about a four-month window here.

The litigation that Mr. Ederer referenced, that related to the '851 patent. Your Honor decided that issue on

summary judgment because the Amazon Kindle products were accused of infringing the '851 patent. So we couldn't very well argue that they were not patented articles in the sense as that term is used in section 287.

The lending patent, the '501 patent, is not accused in that case. The Kindle products were never accused of infringing the '501 patent. Our point of view, your Honor, and we cited some case law to this effect, is that there is no doubt that the plaintiff, the patent holder, has the ultimate burden of proving compliance with 287. But the defendant also bears some burden of identifying products that would be covered under the patents that would trigger the implication of 287.

THE COURT: OK, I understand that argument. Let me hear from defense.

MR. EDERER: Your Honor, I think it becomes a burden issue once again. At this point when there is a license, the burden is upon the plaintiff.

THE COURT: They are saying the license doesn't relate to these two other patents.

MR. EDERER: It certainly does. The license encompasses these two other patents. The license encompasses the entire portfolio of patents, which includes these other patents. And there has been testimony in this case --

THE COURT: If I understand what plaintiff is saying, the litigation against Amazon only accused them of violating --

MR. EDERER: The '851.

THE COURT: Yes, thank you.

MR. CABRAL: Yes, your Honor, the '851 and an unrelated patent as well.

THE COURT: They say that although as part of a settlement they got this agreement, a reasonable person in their position would not have believed that the '501 or '703 patents had been the subject of any accusation of infringement and therefore the marking section doesn't kick in, if I understand it. That is the argument, I think.

MR. EDERER: Right. That is not dispositive, your Honor. In fact, you denied summary judgment with respect to those other two patents because of the question whether Amazon and/or Sony, but let's focus on Amazon, was actually practicing those two patents and therefore needed those licenses notwithstanding the question of whether those licenses --

THE COURT: I understand the issue. I will decide it and let you know at 2 o'clock. Yes, you wanted to say something?

MR. CABRAL: Yes, your Honor. The only thing I would add is that the issue here is illustrated by the fact that had defendants identified any particular products that were covered by these patent during Discovery, which they did not do, we then could have come forward and shown why the patents or at least established why the patents didn't apply to those

AFTERNOON SESSION

2:00 p.m.

(Jury not present)

THE COURT: So I adhere to the instructions in the fashion that I gave it to you, essentially adopting defendants' view of the issue. So I will ask my law clerk to hand each side the final instructions.

Let's bring in the jury.

MR. EDERER: May I raise one issue in light of your ruling?

THE COURT: Yes. You feel mortified that I ruled in your favor and you want to seek reargument?

MR. EDERER: No objection.

We were awaiting the results of the ruling. We did do a calculation from the date March 29 forward for all three patents, which we didn't present because we were awaiting the results of your ruling. So we would like to be able to conduct redirect with Barnes to ask him to provide that calculation.

THE COURT: All right. Let me hear from plaintiff.

MR. BAUER: My cross is based on the numbers that he has just done. What we would ask, because this is an issue of law, is that we just let the jury do it with the numbers they have, and you can correct it in posttrial briefing.

THE COURT: I think it would be aiding the jury to have this calculation. Here is what I think does make sense.

Assuming we are going to do all the things you folks told me about, I do not think it would be fair to plaintiff having to give a summation today, or even part of a summation today. I don't think that is fair. So we will have summations first thing tomorrow followed by the charge, and as a result of that, if you want to take a little bit more time or have a more lengthy recross after that comes out, I will certainly permit that. I am still going to hold the videotape to 38 minutes, but I think it would be not fair to, as I thought about it, the way it was probably going to work out, given everyone's timing, that plaintiff would sum up today and defendant would sum up tomorrow. I don't think that's really fair to the plaintiff, unless you want to do that. I can exclude that possibility if you want it, but it seems to me it wouldn't be equal treatment.

MR. BAUER: We were just going to ask your Honor what time we needed to finish. We didn't want to split the closing either, and I was going to ask your Honor what time I needed to be finished if you wanted to get the closing in today. But I am just not sure, if it's a 5:00 hard break --

THE COURT: I think where we are winding up, and I will apologize to the jury because it is totally my fault, is we will finish the evidence today. We will hear any motions anyone wants to make outside the presence of the jury. We will have summations at 9:00 tomorrow morning, followed immediately by the charge. They still will have the case by late morning

tomorrow.

OK. Let's bring in the jury.

Before defense counsel starts your redirect, I will explain to the jury that there is one portion of this that had to await a ruling by the Court so that both sides will know what is coming in.

(Jury present)

NED BARNES, resumed.

THE COURT: Counsel.

MR. BAUER: Thank you, your Honor.

BY MR. BAUER:

Q. All right, Mr. Barnes. We were talking about what the parties would know under this book of wisdom.

So they are doing the negotiation in late 2009. But as you said, we are not limited to the information they would have had in 2009, correct?

A. That is correct. We don't put blinders on it in a hypothetical negotiation.

Q. So in this respect, the parties would know that Amazon entered into an agreement with ADREA on November 10, 2011, right?

A. I think that the information concerning the agreement would certainly have been a relevant consideration.

Q. Let's just put that on here, November 10, 2011. That's the Amazon/ADREA agreement, and it's 11/10/11, right?

A. Yes, I believe I have.
Q. What evidence did you see that they were negotiating a per unit royalty?
A. Well, a royalty on a per unit basis associated with a percentage of revenue.
Q. A percentage not per unit, right?
A. But it's per unit -- dollars per unit and percentage of revenue are both, in my vocabulary those would both be per unit.
Q. In this regard, from your calculations here, you were given actual sales data for Amazon for 2008, 2009 and 2010, right?
A. That is correct. And part-year estimates for 2011.
Q. Well, let's look at the data that you had to try to calculate the number of units to divide into that 12.5 million.

We can go to your source, but this was your document DDX 1008?
A. This is a slide that was prepared, yes.
Q. And under licensed units, that's the number of actual Amazon sales for those three years, 2008, 9 and 10?
A. Those two years are there, plus 2011, yes.
Q. I said 2008, 2009, 2010, that's three years.
A. I am just referring to the exhibit. But yes, the three years you referred to are on this exhibit, yes.
Q. Let's just see what the Amazon sales were.

For 2008, let's just do actual Amazon. For 2008,

A. Approximate, yes.

Q. And this is actual Barnes & Noble.

Then I just want to get the actual Barnes & Noble numbers through the time of the Amazon agreement.

To the time of the Amazon agreement, are the actual numbers approximately 4 million units?

A. What period of time are you asking me to look at? That doesn't look like 4 million to me.

Q. Let me leave it at 2010.

In 2010, in the first year Barnes & Noble was on the marketplace, they had about 40 percent, they gained about 40 percent -- not gained -- they grew to be about 40 percent the size of Barnes & Noble, right?

MR. EDERER: Objection. Foundation.

A. I'm sorry. You said grew to 40 percent of Barnes & Noble. That didn't make sense.

Q. Let me ask the question again.

We have actual Amazon sales 5.3 million, right?

A. Yes.

Q. In 2010, actual Barnes & Noble sales are about 2 million, right?

A. Correct.

Q. In the year 2010, Barnes & Noble was about 40 percent the size of Amazon?

A. 2 million is a little bit less than 40 percent of 5.3, yes.

Q. So about 40 percent?
A. A little bit less, but yes.
Q. And that percentage continued up until the day of the Amazon agreement, right? Do you know that?
A. What percentage?
Q. For 2011, up until November 2011, so January 2011 to November 2011, Barnes & Noble continued to be about 40 percent of the size of Amazon?
A. I don't believe that's accurate, no.
Q. Let me show you, please, DTX 787.

Do you have a book of exhibits in front of you?

We haven't given you the exhibits yet.

MR. BAUER: Your Honor, I have a book for you.

Q. Do you have DTX 787?

MR. EDERER: Objection, your Honor. Hearsay. Foundation.

THE COURT: I don't hear him offering it yet.

A. I see that exhibit.
Q. DTX 787 is a document you cited in your report, correct?
A. As I sit here right now, I don't have a specific recollection, but it's possible.
Q. Do you want to take a look at your footnote 164 of your report?
A. This appears to be a document that I considered in connection with my report.

Q. Not just considered, cited for the accuracy of the numbers. You relied on the numbers in this document, correct?

A. I don't recall what I relied on it for. I would have to look at it again.

Q. Look at paragraph 58 of your report.

In your report you stated, "Amazon was an established leader in the e-reader market with a reported market share of more than 50 percent," right?

A. Right. I cite to a different document and then I also cite to this document.

Q. That's right.

MR. BAUER: Your Honor, I offer Defendants' Exhibit 787. It comes off their list. I think they waive any objection to it.

MR. EDERER: Objection, your Honor. Hearsay.

THE COURT: Let me see your report.

What was the page again?

MR. BAUER: Page 34, your Honor, paragraph 158.

We can get you your own copy of the report. Right in the middle of the report there is 164 as a footnote.

THE COURT: I see it.

MR. BAUER: I have an extra copy. I can give it to the witness.

THE COURT: Yes, please.

Sustained.

BY MR. BAUER:

Q. Sir, you relied on this document in forming your opinions, right?

A. As we just discussed, I cited this document in connection with a particular statement in my report.

Q. And the statement you cited it for was that the Kindle's market share was 51.7 percent, right?

A. I think --

THE COURT: The actual statement in his report, give me that page again.

MR. BAUER: I was reading the sentence from the document that he used to generate it.

THE COURT: I'm sorry.

Go ahead then.

MR. EDERER: Objection. Hearsay.

THE COURT: Give me again the page of the report.

MR. BAUER: Page 34.

THE COURT: The relevant sentence of the report, which itself is hearsay but hearsay that's been waived, reads: "The market conditions surrounding the Amazon agreement were significantly different than comparative market information that was available at the time of the hypothetical negotiation. For example, at the time of the Amazon agreement, Amazon's Kindle e-readers had been on the market for over four years and Amazon was an established leader in the e-reader market with a

reported market share of more than 50 percent." And the footnote then cites to several sources, articles.

So the objection is sustained.

BY MR. BAUER:

Q. The document you relied on was a Web site?

A. Are you talking about this document? It's an article.

Q. It was an article that you found on the Web?

A. It's very likely that it was found on the Internet.

Q. I don't need to deal with what the articles are. We are lucky. We have the exact sales figures. Let's get the exact sales figures for the first three quarters of 2011 for Barnes & Noble. I thought that would be the easier way to do it, but we will just get it quickly.

Going to your Barnes Exhibit 4A, and right in the middle, from January 2011, let's take it through September 2011. Those are the first three quarters, right?

A. OK.

Q. Just ballpark for me what you think those sales are for the first three quarters, actual sales for Barnes & Noble.

MR. EDERER: Objection, your Honor.

May we approach?

THE COURT: You may approach, but I don't see anything objectionable in the question just put. If there is some other issue you can approach.

MR. EDERER: There is some other issue.

THE COURT: Come up.

(At the sidebar)

THE COURT: Before we get to your issue, just to elaborate on the last ruling. The mere fact that the defense lists an exhibit doesn't mean that they waive all objections to it if used for some other purpose or offer it for some other purpose after they haven't offered it by the defense.

In the case of this particular article, the expert was citing it for the fact that Amazon had been reported -- and the newspaper article itself indicates it wasn't reported like in an SEC filing or anything like that, it was reported from another hearsay nongovernmental source -- to have more than 50 percent of the market. That doesn't remotely open the door to plaintiffs relying on that article to show that what the article -- again, in total double hearsay form -- reports about Nook sales for that same period is something that this expert is vouching for, let alone that it's admissible in evidence. So that was the reason I sustained the objection.

Now, what is the new problem?

MR. EDERER: I would like to take this one step further, your Honor. Because what is going on here now is that Mr. Bauer is attempting to create for the jury in a prejudicial way the false inference that they should take the $12.5 million that was paid by Amazon, which related to a 300 patent portfolio, and they should simply take the difference between

whatever the percentage of the market Amazon had and whatever percentage of the market Barnes & Noble had, do a quick math calculation, and $6 million. This is going back to what Professor Magee was exactly doing and why he was excluded. This is where this is all leading.

THE COURT: I don't think so. At least he hasn't done that yet. I think he is, at a minimum, attempting to show that some of the assumptions that underlay the witness's treatment of the Amazon settlement were arguably misplaced. So, for example, he showed right before the lunch break that Barnes & Noble would have had very different motivations or a greater degree of motivation than Amazon would to have entered into that agreement. That was maybe right, maybe wrong, but that was a fair argument to bring to the jury's attention. And now I think he is on the way to bring to their attention another possibility.

So I am going to allow this. This is without prejudice to any objections you want to make about his summation, if he is going to say what you think he is going to say, but I don't know that yet.

MR. BAUER: Your Honor, the witness has said that the Amazon agreement is the single best market value. I am going to ask him that if Barnes & Noble had 40 percent of the market on that day, why wouldn't he have valued the agreement at $5 million?

THE COURT: I think that is a fair argument as impeaching his methodology. That doesn't mean that you should be able to argue to the jury on summation that that's what it should be. Those are two different issues.

MR. BAUER: OK. Thank you.

(Continued on next page)

THE COURT: The objection is sustained on the grounds of argumentative. I have a feeling that was probably the last question.

MR. BAUER: Yes, your Honor.

THE COURT: Redirect.

REDIRECT EXAMINATION

BY MR. EDERER:

Q. Mr. Barnes, on your direct examination I asked you some questions about the per-unit royalty calculation that you had performed and the dollar amount of royalties that you had calculated with respect to the three patents-in-suit coming out of the hypothetical negotiation. Do you recall that?

A. I do.

Q. Could we put up the previous slide, please. This was the slide we looked at at that time, correct?

A. I believe you are correct, yes.

Q. I believe you testified that this calculation covers the period December 1, 2009 to June 30, 2014, right?

A. That's correct with the caveat that we discussed about the '851 patent.

Q. Did you do any other calculation with respect to the anticipated royalties that would be paid by Barnes & Noble in the hypothetical negotiation for a different period of time?

MR. CABRAL: Objection, your Honor. Could we approach?

THE COURT: No. And there is going to be no more side bars. This redirect is going to be finished in the next ten minutes. And we are going to finish the evidence in this case today. That is not a projection. That is an order.

MR. CABRAL: Thank you, your Honor.

THE COURT: Sit down. Ten minutes, counsel.

MR. EDERER: Thank you, your Honor.

A. Yes, I did another calculation similar to this that would have the damages period beginning March 29, 2012.

Q. Is this the calculation that you did, Mr. Barnes?

A. Yes, sir, it is.

Q. This is the second calculation, right?

A. Yes, sir.

Q. Can you explain what we are looking at here.

A. Yes. These are all the rates that we discussed earlier. None of that has changed. All I have done here is I have applied the rates to only those sales beginning with March 29, 2012. I understand that for legal reasons. But this is the calculation that would reflect the total damages if damages began on March 29, 2012, and go through June 30, 2014.

Q. That is broken down between the three different patents, right?

A. Yes, it is, the '851 and '501 together and then the '3 individually.

Q. The number for the '851 hasn't changed from the previous

calculation, right?
A. That's right, because the '851, even under the previous calculation, the damage period for the '851 was limited to March 29, 2012, to December 9, 2012, the same 8½-month period.
Q. This calculation was done using the same royalty rates that you had applied to your other calculation, right?
A. The exact same royalty rates.
Q. What is the total amount for the three different patents based upon this calculation starting from March 29, 2012, for the three of them?
A. It's approximately $405,000.
Q. Is it your opinion, sir, that that is the maximum amount of damages that ADREA would be entitled to should it demonstrate that all three patents-in-suit have been infringed and are valid using March 29, 2012, as a starting point?
A. That is correct.
Q. Mr. Barnes, you were asked some questions on direct examination about the potential for Barnes & Noble to be, I think the word that was used was desperate going into the hypothetical negotiation because they had spent lots of money leading up to that point and would really, really need that license. Do you recall that?
A. I recall the questions, yes.
Q. Isn't it the case that the rules under Georgia-Pacific involve a willing licensor and a willing licensee?

(Witness excused)

THE COURT: Ladies and gentlemen, we will take a 10-minute break at this time. I am going to try to hold it to 10 minutes. As you can see, we are running behind. We are not going to have summations until first thing tomorrow morning, but we are going to finish the evidence today, I guarantee you that. See you in ten minutes.

(Jury not present)

THE COURT: It is 3:29. At 3:39 we will bring in the jury and begin the tape. It had better be 38 minutes, because if it's 39 the jury will not hear the last minute because we will cut it off.

MR. EDERER: Your Honor, we are prepared to cut one of the two depositions.

THE COURT: That's good.

MR. CABRAL: Your Honor, we may be able to tell you after the break if we intend to call Dr. Wang as well.

THE COURT: All right.

MR. BAUER: We are all tired, your Honor.

THE COURT: That's all fine. Sounds good to me. There anything I can do to make you more tired? We'll see you in ten minutes.

(Recess)

THE COURT: What did the defense decide about the depositions?

MR. EDERER: We are going to play one deposition, your Honor.

THE COURT: Which one?

MR. EDERER: Shawn Ambwani.

MS. ARNI: Before we begin the video, we move the admission of five documents: Defense Exhibit 644, Defense Exhibit 646, Plaintiff's Exhibit 120, Defense Exhibit 55, and Defense Exhibit 272.

THE COURT: Any objection?

MR. BAUER: We don't know what those are, your Honor.

THE COURT: They were the ones referenced in the deposition that both sides --

MR. BAUER: Then there is no objection.

THE COURT: Give me those numbers again.

MS. ARNI: Certainly, your Honor. Defense 644, defense 646, plaintiff 120, defense 55, and defense 272.

THE COURT: Those are all received.

(Plaintiff's Exhibit 120 received in evidence)

(Defendant's Exhibits 55, 272, 644, and 646 received in evidence)

MR. BAUER: As for that Amazon document, the January 11, 2011, document they objected to, we have a stipulation from them. "The parties accept representation that the two Amazon documents are business records of Amazon created and maintained in the ordinary course of business and accordingly agree not to

MR. CABRAL: We have one issue, your Honor.

THE COURT: Yes.

MR. CABRAL: It relates to the sentence we discussed earlier that was the subject of your Honor's ruling regarding patent marking. And not to reconsider your judge's ruling, but to reconsider the accuracy of that language in light of your Honor's ruling on the marking issue.

THE COURT: Go ahead.

MR. CABRAL: Plaintiff believes the law allows it to recover damages prior to the point in time when 271 was triggered which is the subject of your Honor's ruling. So the law is pretty clear and we have three cases and secondary source available here that says that plaintiffs or patent holders are allowed to recover damages prior to the point in time in which 287 is triggered and there is a marking obligation. So, your Honor, prior to the obligation to mark, plaintiff is entitled to damages under the law and after the date of actual notice plaintiff is also allowed to recover damages under the law.

The only issue in this case, in light of your Honor's ruling that there was an obligation to mark products under the '703 and '501 patents, the only period that that affects is that four-month window in between the Amazon license and the date of actual notice in March of 2012.

THE COURT: Let me hear from defense counsel.

MR. SHARIFAHMADIAN: Your Honor, this is an issue of the plaintiff having waived this issue. They have not raised it at any time during this case.

THE COURT: Oh, no, no. The very argument he just made, he has made before. I can remember him making that argument.

MR. SHARIFAHMADIAN: Yesterday for the first time, after your Honor said that anything not raised in jury instructions sent on Friday would be waived and would not be part of the jury instructions.

THE COURT: Last night I got from both sides all sorts of untimely unsolicited communications which of course I was thrilled to receive but I did consider it.

So on the merits, do you have any answer to the point just made?

MR. SHARIFAHMADIAN: If I may have one second?

THE COURT: Yes.

MR. SHARIFAHMADIAN: Our position would be that there is nothing in the language of 287 itself that requires parsing of the time period in this matter. There was an obligation to mark. Your Honor has ruled that it has come into effect and therefore --

THE COURT: I must say, I think 287 is a strange statute.

MR. CABRAL: Plaintiff will offer the cases in the

secondary source if it is helpful.

THE COURT: Here is what I am going to do on this because I am running out of time. I teach at Columbia tonight and I have to hear this other matter.

So you would have it read what?

MR. CABRAL: I will bring up the exact language, your Honor.

It relates to the last sentence, your Honor.

THE COURT: You would say for the '501 and '703 patents, however, damages should run from December 2009 through the date of your verdict except for -- and then we would specify that four-month period?

MR. CABRAL: It would be November 10th of --

THE COURT: How can they even apply that, given the evidence in this case? They don't have the data to separate out that four months.

MR. BAUER: We have no objection to giving them those four months or resubmitting the numbers.

THE COURT: I don't have time. I want both sides to submit by 7:30 tonight -- and I really mean 7:30, not the fake times that I got after 7:30 last night -- to my law clerk what you say that last sentence should say, what case law supports your respective positions -- actually, I take it back, I think it should be the plaintiff who should do this by 7:30 and the defense by 8:00 because the defense has their position stated

in the instruction -- and what evidence would then be added to the record before the jury hears summations tomorrow. So that from plaintiffs by 7:30, response by defendants by 8:00.

My class ends at 8:15 so my law clerk will get that stuff to me and I will give you my ruling by sometime this evening.

Anything else?

MR. CABRAL: No, your Honor.

MR. SHARIFAHMADIAN: No, your Honor.

THE COURT: Very good.

(Adjourned to October 22, 2014, at 9:00 a.m.)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

ADREA, LLC,

Plaintiff,

v. 13 Cv. 4137 (JSR)

BARNES & NOBLE, INC., BARNESANDNOBLE.COM LLC, AND NOOK MEDIA LLC,

Defendants.

----------x

October 22, 2014
9:40 a.m.

Before:

HON. JED S. RAKOFF

District Judge

APPEARANCES

PROSKAUER ROSE LLP
Attorneys for Plaintiff
BY: STEVEN M. BAUER
COLIN CABRAL
BRENDAN COX

ARNOLD & PORTER LLP
Attorneys for Defendants
BY: LOUIS S. EDERER
ALI R. SHARIFAHMADIAN
MICHAEL A. BERTA
SUSAN LEE SHIN
YUE-HAN CHOW
SUSAN BRACKNEY ARNI
TERI RODRIGUEZ

Amazon said, your patents aren't infringing, we don't think they are valid, we are in litigation. Then they settled, they compromised.

At this negotiation, Barnes & Noble walks in and says, I know your patents are valid and infringed, I know I need this technology. They didn't offer, you heard nothing about how they could have worked around this. They could have told you these were small changes, this was accidental, I could just make a small change, I could have been out of this if I needed the patent, who needed it.

You haven't heard one word of evidence, not one word, of how they could have avoided using this technology. That's what makes these patents valuable. Right? No one has told you there was an alternative to using this technology. No one has told you that. He tells you the parties would have known about the agreement that Amazon entered.

How do you price this? What we know is that Barnes & Noble was successful against Amazon. How much did you hear them talk about Barnes & Noble's a startup company, no product? Barnes & Noble is a billion-dollar company. This is no startup with no money. And they were successful. They got to grow almost half the size of Amazon.

MR. EDERER: Objection, your Honor.

THE COURT: Overruled.

MR. BAUER: In the year 2010 Barnes & Noble was about

40 percent the size of Amazon. That's the testimony. 2 million units in less than -- in about a year. All right? They are successful.

What does he come in to do? What does Mr. Barnes tell you would be the right amount? He tells you 8 cents a unit. How does he get there? He goes to the Amazon agreement and he wants to divide that Amazon agreement by as big a number as he can to turn it into a royalty rate.

Rather than look at how many Amazon had sold up till then and divide it by that number, which was the numbers he has up there -- using his numbers it's about 25 million units, something like that -- rather than dividing what Amazon paid by that and telling you what it was, he projects out for six years.

Where did he get those projections? He made them up. He multiplied numbers by 10 percent when we know that the facts, the facts were that they were going down. He was coming up with a big number so he can drive the royalty rate down.

What we got here, these are the sales numbers he told you were actual. He knew this when he did that chart. He says, I don't care what really happened. That's what he said, I don't care what really happened. He said, I'm putting in there what I, Mr. Barnes, think the Amazon people were projecting at the time, with no real evidence showing that they were projecting. For 2011 he put in the number 19 million when

considering. For the '851 patent, damages may only be awarded for the period of March 29, 2012, through December 9, 2012. For the '501 and '703 patents, however, damages should run from March 29, 2012, through the date of your verdict.

If you find defendants liable for infringement, there is one last thing you need to determine bearing on damages, which is whether the infringement by defendants was willful. The determination of whether defendants' infringement was willful will not affect the specific amount of compensatory damages that you will assess, which are not intended to punish defendants but simply to compensate plaintiff, but it will aid the Court in determining whether any additional damages must be assessed.

To prove willful infringement, plaintiff must prove by clear and convincing evidence that defendants either actually knew they were infringing plaintiff's patents or, once they were put on notice of plaintiff's patents, recklessly disregarded the fact that their actions constituted an unjustifiably high risk of infringement of that patent.

To determine whether defendants' infringement was willful, you should consider all relevant facts to the extent they are supported by credible evidence, including, for example:

1. Whether or not defendants intentionally copied a product of plaintiff;

AFTERNOON SESSION

2:20 p.m.

(Jury not present)

THE COURT: So, first of all, I forgot to mention this morning, and let me note for the record, that last night I received excellent submissions from both sides on the somewhat close question of the duration of damages. I decided in favor of defendants' position, but I do want to acknowledge that it's a close call. If it becomes not mooted by the jury's verdict, I will write a short opinion setting forth the reasons for my determination so that any reviewing court will have the benefit of a more elaborate discussion.

Secondly, with respect to the issue that was raised by plaintiff's counsel after summations, I don't think any further instruction is necessary, and I don't think what defense counsel said violated any previous ruling.

Let's go back to the original source of all this, which is the ruling from this Court in the Markman hearing. As I said in my Markman opinion at page 8, "The terms 'a predetermined URL associated with a consumer appliance' and 'an identifier associated with a consumer appliance' require no further construction. B&N proposes adding the modifier 'particular' before 'consumer appliance,' but that would inappropriately rewrite the claim language."

Now, I mention this because there was no ruling

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

ADREA, LLC,

Plaintiff,

v. 13 Cv. 4137 (JSR)

BARNES & NOBLE, INC., BARNESANDNOBLE.COM LLC, AND NOOK MEDIA LLC,

Defendants.

----------x

October 24, 2014
9:00 a.m.

Before:

HON. JED S. RAKOFF

District Judge

APPEARANCES

PROSKAUER ROSE LLP
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BY: STEVEN M. BAUER
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BRENDAN COX

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MICHAEL A. BERTA
YUE-HAN CHOW
SARAH BRACKNEY ARNI
SUSAN L. SHIN

infringement was found."

THE COURT: OK. If infringement of a valid patent claim or claims was found.

LAW CLERK: OK. "In determining damages, even though plaintiff bears the burden of proof, you can still consider all evidence including any evidence introduced by the defendants. Finally, if you find in the end that, even taking account of all the evidence, plaintiff has not carried its burden as to any amount of damages but has nonetheless proved infringement, you should --"

THE COURT: Proved infringement of a valid claim or claims.

LAW CLERK: "You should award the amount of zero dollars, which is known as nominal damages."

THE COURT: OK. Good. I think that is a print, as they say.

So I will have my law clerk type it up nicely, put at the bottom Judge Rakoff, send it into the jury, have a copy made for each side and also a copy marked as a court exhibit.

Anything else we need to take up now?

MR. CABRAL: Nothing from plaintiff.

MR. EDERER: No, your Honor.

THE COURT: Very good. Thanks so much.

(Recess pending verdict)

(Jury not present; time noted: 3:55 p.m.)

THE COURT: I want my law clerk to please read the plaintiff's note.

LAW CLERK: "To the judge: Requesting Ned Barnes report evidence, DTX 787, and calculator, and James Hilt's testimony."

THE COURT: All right. If it's in evidence, they should have it.

THE DEPUTY CLERK: It's not in evidence.

THE COURT: Then they can't have it.

They can have, obviously, the testimony and they can have a calculator.

There is a calculator down at chambers.

THE DEPUTY CLERK: I already have one, Judge. I have got the calculator. I have got nine copies of the testimony.

THE COURT: Great. Let's send that in. And to speed things up, unless any counsel disagrees, I will just have my courtroom deputy tell them, when the other items are brought in, that the exhibit they mentioned is not in evidence.

THE DEPUTY CLERK: OK. Are we going to refer to the Barnes report?

THE COURT: I'm sorry. Read me the note one more time.

LAW CLERK: "Requesting Ned Barnes report evidence, DTX 787."

THE COURT: That seems to be a request for that

EXHIBIT B

Proskauer Proskauer Rose LLP One International Place Boston, MA 02110-2600

October 4, 2014

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Re: *ADREA, LLC v. Barnes & Noble, Inc., et al.*, No. 13-CV-4137 (JSR)

Dear Lou:

The proposed jury instructions reveal genuine disputes between the parties concerning the law relating to 35 U.S.C. § 287 ("Section 287").

First, B&N's proposed instructions state that Plaintiff has the burden of identifying and establishing that unspecified Amazon and Sony e-readers are ***not*** "patented articles" under Section 287. *See* Dkt. No. 76, B&N Jury Instructions, at 75 ("Because the e-readers are sold under a license that includes the patents at issue, ADREA has the burden of proving that the Amazon and Sony e-readers do not utilize the claimed inventions."). This is not the law.

- *Sealant Sys. Int'l. v. TEK Global S.R.L.*, No. 5:11-cv-00774, 2014 WL 1008183, * 31 (N.D. Cal. Mar. 7, 2014) ("It would be an odd result to require [patentee] to bear the burden to show that its predecessor-in-interest either did not sell any product embodying the patent or, if it did, it complied with the marking statute."); *id.* ("Absent guidance from the other side as to which specific products are alleged to have been sold in contravention of the marking requirement, a patentee . . . is left to guess exactly what it must prove up to establish compliance with the marking statute.").

- *Oracle America, Inc. v. Google, Inc.*, No. 10-cv-3561, 2011 WL 5576228, *3 (N.D. Cal. Nov. 15, 2011) (holding that Google, the accused infringer, "failed to produce evidence establishing acts by Oracle [the patentee] that would trigger the damages limitation in the patent-marking statute" and therefore "did not show that the statute applie[d]"); *id.* ("Because [defendant] did not show that the statute applies, no burden of production is shifted to [patentee] . . . .").

- *In re Katz Interactive Call Litig.*, 821 F. Supp. 2d 1135, 1138 (C.D. Cal. 2011) ("Although we recognize that Katz has the burden to prove compliance with § 287, we held that the defendants had the burden to prove that there were patented articles to mark.").

- *Unova, Inc. v. Hewlett-Packard Co.*, NO. 02-cv-3772 ER, 2005 WL 6070187, at *1 (C.D. Cal. Dec. 9, 2005) ("The party claiming failure to mark, however, must show that the allegedly non-marked articles were, in fact, patented articles.").

- *Laitram Corp. v. Hewlett-Packard Co.*, 806 F. Supp. 1294, 1297 (E.D. La. 1992) ("To benefit from the § 287 limitation, then, the defendant must show that either the patentee or his agent sold a patented article.").

Second, setting aside the burden of producing evidence, we also disagree with your position that Plaintiff cannot recover damages for infringement of the '501 and the '703 patents prior to the date of actual notice. *See* Dkt. No. 76, B&N Jury Instructions, at 76 ("If you determine that Amazon or Sony e-readers utilize the '501 or '703 patents, and that they have not marked their e-readers with the patent numbers, damages only begin from the date of actual notice of infringement from ADREA to Barnes & Noble, which the Court determined to be March 29, 2012."). Again, this is not the law.

- *Tulip Computer Int'l B.V. v. Dell Computer Corp.*, No. 00-981, 2003 WL 1606081, at *15 (D. Del. Feb. 4, 2003) ("Since § 287(a) is not triggered when the patentee is not producing patented articles, the patentee can recover damages for infringement during this period of time even if, later, § 287(a) is triggered.").

- *WiAV Sol'ns. LLC v. Motorola, Inc.*, 732 F. Supp. 2d 634, 639-40 (E.D. Va. 2010) ("[T]he Court holds that a patentee is not precluded from collecting damages for a period in which marking was not required even if the requirements of the marking statute were later triggered and the patentee failed to comply. This conclusion is most consistent with the purpose of the statute.").

- *Wokas v. Dresser Indus.*, 978 F. Supp. 839, 848 (N.D. Ind. 1997) ("The Court also holds that [defendant] is potentially liable for any infringement it committed before the Shipping Date [of unmarked products].").

- 2-10 Horwitz on Patent Litigation § 10.23, "Limitations on Damages: Marking and Notice" ("If products sold by the patentee do not practice the claimed invention, the marking requirement is not triggered. Even if a patentee later sells, and fails to mark, products which do practice the invention, the marking statute does not bar recovery of damages during the period in which there was no duty to mark. ***Thus, even if § 287 is later triggered, recovery will not be barred for the time period during which § 287 was not triggered.***") (emphasis added).

Given the parties' disagreement on these questions of law, we expect that B&N will make no mention to the jury of the parties' obligations under Section 287 until the Court resolves these issues. If you intend to address patent marking in your opening statement, please let us know immediately so that we can seek an order from the court before opening statements are made.

Sincerely,

Colin Cabral

EXHIBIT C

Chow, Yue-Han

From: Chow, Yue-Han
Sent: Friday, October 17, 2014 5:00 PM
To: Celia_Choy@nysd.uscourts.gov
Cc: Adrea-Litigation; sbauer@proskauer.com; Cabral, Colin G.
Subject: Adrea, LLC v. Barnes & Noble, Inc., et al., No. 13-cv-4137 (JSR) - Proposed Additional Jury Instructions
Attachments: B&N Amended Jury Instructions.docx

Dear Ms. Choy,

Pursuant to Judge Rakoff's instruction on October 15, Defendants submit the attached proposed final set of jury instructions. Opposing counsel is cc-ed on this communication.

Regards,
Yue-Han Chow

EXHIBIT D

Chow, Yue-Han

From: Chow, Yue-Han
Sent: Monday, October 20, 2014 7:44 PM
To: Celia_Choy@nysd.uscourts.gov; RakoffNYSDChambers@nysd.uscourts.gov
Cc: Adrea-Litigation; sbauer@proskauer.com; Cabral, Colin G.; Ederer, Louis S.; Sharifahmadian, Ali R.
Subject: Adrea, LLC v. Barnes & Noble, Inc., et al., No. 13-cv-4137 (JSR) - Proposed Revised Jury Instructions
Attachments: BN proposed instructions on marking willfulness.doc

Dear Ms. Choy,

Pursuant to Judge Rakoff's instruction in court today, Defendants submit the attached proposed revised jury instructions. Opposing counsel is cc-ed on this communication. Please note that, as the Court permitted, we have re-ordered the Georgia-Pacific Factors to keep the factor numbers consistent with what was presented to the jury. Also, as discussed with the Court, we have added a short instruction on the commencement of damages and marking issues. Lastly, Defendants' proposed willful infringement instruction makes minor modifications to the instruction previously proposed by the Court.

Regards,
Yue-Han Chow

Yue-Han Chow
Arnold & Porter LLP
399 Park Avenue
New York, NY 10022-4690

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EXHIBIT E

Chow, Yue-Han

From: Cabral, Colin G. [CCabral@proskauer.com]
Sent: Monday, October 20, 2014 9:16 PM
To: Chow, Yue-Han; Celia_Choy@nysd.uscourts.gov; RakoffNYSDChambers@nysd.uscourts.gov
Cc: Adrea-Litigation; Bauer, Steven M.; Ederer, Louis S.; Sharifahmadian, Ali R.
Subject: RE: Adrea, LLC v. Barnes & Noble, Inc., et al., No. 13-cv-4137 (JSR) - Proposed Revised Jury Instructions
Attachments: 10-4-14 letter to Edererer re marking.pdf; Sealant Sys v. TEK.DOC; Laitram v. HP.DOC; Unova v. HP.DOC; In re Katz.doc; Oracle v. Google Marking.doc

Dear Ms. Choy:

Pursuant to Judge Rakoff's instructions, we write in response to defendants' proposed instruction regarding the commencement of damages and patent marking. We have no objection to the first sentence regarding the '851 patent. The remainder of the proposed instruction is highly unorthodox, misstates the law, and is not an appropriate instruction for the jury. Prior to submitting proposed jury instructions, defendants had not identified any "patented articles" under Section 287 with respect to the '501 and '703 patents. The attached letter, sent to defendants on October 4, 2014, summarizes plaintiff's position on the marking issue. Much of the case law cited in the letter is also attached for the Court's convenience.

Respectfully submitted,
Colin Cabral

Colin G. Cabral
Senior Litigation Counsel

Proskauer
2049 Century Park East, Suite 3200
Los Angeles, CA 90067-3206
d 310.284.5611 | f 310.557.2193
ccabral@proskauer.com

From: Chow, Yue-Han [mailto:Yue-Han.Chow@APORTER.COM]
Sent: Monday, October 20, 2014 7:44 PM
To: Celia_Choy@nysd.uscourts.gov; RakoffNYSDChambers@nysd.uscourts.gov
Cc: Adrea-Litigation; Bauer, Steven M.; Cabral, Colin G.; Ederer, Louis S.; Sharifahmadian, Ali R.
Subject: Adrea, LLC v. Barnes & Noble, Inc., et al., No. 13-cv-4137 (JSR) - Proposed Revised Jury Instructions

Dear Ms. Choy,

Pursuant to Judge Rakoff's instruction in court today, Defendants submit the attached proposed revised jury instructions. Opposing counsel is cc-ed on this communication. Please note that, as the Court permitted, we have re-ordered the Georgia-Pacific Factors to keep the factor numbers consistent with what was presented to the jury. Also, as discussed with the Court, we have added a short instruction on the commencement of damages and marking issues. Lastly, Defendants' proposed willful infringement instruction makes minor modifications to the instruction previously proposed by the Court.

Regards,
Yue-Han Chow

Yue-Han Chow
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New York, NY 10022-4690

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www.arnoldporter.com

EXHIBIT F

Chow, Yue-Han

From: Chow, Yue-Han
Sent: Monday, October 20, 2014 11:05 PM
To: Celia_Choy@nysd.uscourts.gov; RakoffNYSDChambers@nysd.uscourts.gov
Cc: Adrea-Litigation; Bauer, Steven M.; Ederer, Louis S.; Sharifahmadian, Ali R.; Cabral, Colin G.; Arni, Sarah Brackney
Subject: RE: Adrea, LLC v. Barnes & Noble, Inc., et al., No. 13-cv-4137 (JSR) - Proposed Revised Jury Instructions

Dear Ms. Choy:

Barnes & Noble writes to respond to correct the many errors in the below communication from plaintiff. As requested by the Court, B&N provided proposed jury instructions on the damages period/marking and willful infringement. Plaintiff did not provide alternative instructions. Although B&N believes that plaintiff's attempt to argue legal issues is inappropriate, B&N responds to the many errors in plaintiff's submission.

First, there is nothing "unorthodox" about a jury instruction on the commencement of damages, including marking issues, in a patent infringement litigation. Indeed, the Federal Circuit Bar Association's model jury instructions includes such a model instruction. Of course, B&N has tailored the model instructions to fit the circumstances in this case, including the production of patented articles by a licensee, rather than by the patent holder.

Second, plaintiff incorrectly asserts that B&N did not identify any patented articles prior to its proposed jury instructions. This is directly contradicted by the record in this case. B&N identified the licensed, patented articles (Amazon Kindles and Sony e-readers) in its motion for summary judgment, filed nearly 9 months ago in January 2014. Moreover, B&N sought discovery throughout the litigation, including from plaintiff's 30(b)(6) witnesses, regarding plaintiff's failure to ensure that its licensees complied with the requirements of the marking statute.

Third, as to the first issue raised in plaintiff's letter, the Federal Circuit has consistently held that the burden of proving compliance with the marking statute is on the patent owner. *See, e.g., Nike, Inc. v. Wal-Mart Stores, Inc.*, 138 F.3d 1437, 1447 (Fed. Cir. 1998) (patent holder must prove compliance with marking statute by preponderance of evidence); *Maxwell v. J. Baker, Inc.*, 86 f.3d 1098, 1111 (Fed. Cir. 1996) (patentee bears burden of proving compliance with marking requirements); *see also WiAV Solutions LLC v. Motorola, Inc.*, 732 F. Supp. 2d 634, 640 (E.D. Va. 2010) (burden to show no patented articles is on patent holder). The cases on which plaintiff relies are outliers that are contrary to binding Federal Circuit precedent and have been recognized as such. *See, e.g., DR Sys., Inc. v. Eastman Kodak Co.*, 2009 WL 2632685, at *4 (S.D. Cal. Aug. 24, 2009) (citing 4 Robert A. Matthews Jr., Annotated Patent Digest § 30:148)).

Fourth, as to the second issue raised in plaintiff's letter, plaintiff's have never raised this argument previously. Plaintiff's proposed jury instructions did not include a marking instruction at all, simply incorrectly asserting that the damages period for the '501 and the '703 patents begins with the first sale in November 2009. Nor did plaintiff file a proposed modification addressing this newly asserted argument when the Court directed that any new instructions had to be provided by last Friday, October 17. Any argument for an alternative instruction based on plaintiff's newly asserted argument was waived.

B&N respectfully reiterates its request that the Court instruct the jury pursuant to the instructions that B&N submitted earlier this evening.

Regards,
Yue-Han Chow

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Yue-Han.Chow@aporter.com
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From: Cabral, Colin G. [mailto:CCabral@proskauer.com]
Sent: Monday, October 20, 2014 9:16 PM
To: Chow, Yue-Han; Celia_Choy@nysd.uscourts.gov; RakoffNYSDChambers@nysd.uscourts.gov
Cc: Adrea-Litigation; Bauer, Steven M.; Ederer, Louis S.; Sharifahmadian, Ali R.
Subject: RE: Adrea, LLC v. Barnes & Noble, Inc., et al., No. 13-cv-4137 (JSR) - Proposed Revised Jury Instructions

Dear Ms. Choy:

Pursuant to Judge Rakoff's instructions, we write in response to defendants' proposed instruction regarding the commencement of damages and patent marking. We have no objection to the first sentence regarding the '851 patent. The remainder of the proposed instruction is highly unorthodox, misstates the law, and is not an appropriate instruction for the jury. Prior to submitting proposed jury instructions, defendants had not identified any "patented articles" under Section 287 with respect to the '501 and '703 patents. The attached letter, sent to defendants on October 4, 2014, summarizes plaintiff's position on the marking issue. Much of the case law cited in the letter is also attached for the Court's convenience.

Respectfully submitted,
Colin Cabral

Colin G. Cabral
Senior Litigation Counsel

Proskauer
2049 Century Park East, Suite 3200
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d 310.284.5611 | f 310.557.2193
ccabral@proskauer.com

From: Chow, Yue-Han [mailto:Yue-Han.Chow@APORTER.COM]
Sent: Monday, October 20, 2014 7:44 PM
To: Celia_Choy@nysd.uscourts.gov; RakoffNYSDChambers@nysd.uscourts.gov
Cc: Adrea-Litigation; Bauer, Steven M.; Cabral, Colin G.; Ederer, Louis S.; Sharifahmadian, Ali R.
Subject: Adrea, LLC v. Barnes & Noble, Inc., et al., No. 13-cv-4137 (JSR) - Proposed Revised Jury Instructions

Dear Ms. Choy,

Pursuant to Judge Rakoff's instruction in court today, Defendants submit the attached proposed revised jury instructions. Opposing counsel is cc-ed on this communication. Please note that, as the Court permitted, we have re-ordered the Georgia-Pacific Factors to keep the factor numbers consistent with what was presented to the jury. Also, as

discussed with the Court, we have added a short instruction on the commencement of damages and marking issues. Lastly, Defendants' proposed willful infringement instruction makes minor modifications to the instruction previously proposed by the Court.

Regards,
Yue-Han Chow

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New York, NY 10022-4690

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EXHIBIT G

Ederer, Louis S.

From: Celia_Choy@nysd.uscourts.gov
Sent: Tuesday, October 21, 2014 9:04 AM
To: Cabral, Colin G.; Bauer, Steven M.; Ederer, Louis S.; Sharifahmadian, Ali R.
Subject: ADREA v. B&N, 13cv4137
Attachments: 2014-10-21 Jury Charges (circ.).doc; 2014-10-21 Verdict (circ.).doc

Dear Counsel:

Subject to checking for typographical errors, this is the Court's final charge, except for the final paragraph of charge number 12 and the related issue of marking, which will be the subject of further oral argument later today. No other arguments on any other aspect of the charge will be permitted.

Thanks,

Celia Choy
Law Clerk to the Hon. Jed S. Rakoff
U.S. District Court for the Southern District of New York
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street Room 1340
New York, NY 10007
(212) 805-0401

EXHIBIT H

Ederer, Louis S.

From: Cabral, Colin G. [CCabral@proskauer.com]
Sent: Tuesday, October 21, 2014 7:30 PM
To: Celia_Choy@nysd.uscourts.gov
Cc: Ederer, Louis S.; Sharifahmadian, Ali R.; Berta, Michael A.; Adrea-Litigation
Subject: ADREA v B&N, 1:13-cv-04137
Attachments: Horwitz - 10_23_Limitations_on_Damages.pdf; Tulip Computers Int'l B.V. v. Dell Computer Corp., 262 F. Supp. 2d 358.pdf; WiAV Solutions LLC v. Motorola, Inc., 732 F. Supp. 2d 634.pdf; Wokas v. Dresser Indus., 978 F. Supp. 839.pdf; JTX-034.pdf

Dear Ms. Choi:

Pursuant to Judge Rakoff's order, we write on behalf of plaintiff regarding the last sentence of Jury Instruction No. 12 (Compensatory Damages).

Plaintiff proposes that the last sentence of Instruction No. 12 be modified to read as follows: "For the '501 and '703 patents, however, damages should run from ~~March 29, 2012~~ December 1, 2009 through the date of your verdict, excluding damages for the period between November 2011 and March 2012."

The only additional evidence needed is a stipulated fact regarding the number of accused units sold by B&N between November 10, 2011 (the date of the Amazon agreement) and March 29, 2012 (the date of actual notice). The Joint Pretrial Consent Order contains factual stipulations by the parties relating to the number of accused units sold, broken down into several different time periods. (Dkt No. 140, at 9-10). These stipulated sales numbers have also been entered into evidence as Joint Exhibit 34. Removing unmarked sales would reduce the total number of accused units by 2,421,712.

Date	Number of Accused Units
November 2011	682,722
December 2011	1,185,932
January 2012	191,202
February 2012	246,740
March 2012	115,116
Total	**2,421,712 total units**

Plaintiff's request is based in law stating that a patentee can recover damages during a period in which marking was not required, even if the requirements of the marking statute (Section 287) were later triggered. The cases and secondary source material relied on by plaintiff are summarized below and attached to this email.

- *Tulip Computer Int'l B.V. v. Dell Computer Corp.*, No. 00-981, 2003 WL 1606081, at *15 (D. Del. Feb. 4, 2003) ("Since § 287(a) is not triggered when the patentee is not producing patented articles, the patentee can recover damages for infringement during this period of time even if, later, § 287(a) is triggered.").

- *WiAV Sol'ns. LLC v. Motorola, Inc.*, 732 F. Supp. 2d 634, 639-40 (E.D. Va. 2010) ("[T]he Court holds that a patentee is not precluded from collecting damages for a period in which marking was not required even if the requirements of the marking statute were later triggered and the patentee failed to comply. This conclusion is most consistent with the purpose of the statute.").

- *Wokas v. Dresser Indus.*, 978 F. Supp. 839, 848 (N.D. Ind. 1997) ("The Court also holds that [defendant] is potentially liable for any infringement it committed before the Shipping Date [of unmarked products].").

- Horwitz on Patent Litigation § 10.23, "Limitations on Damages: Marking and Notice" ("If products sold by the patentee do not practice the claimed invention, the marking requirement is not triggered. Even if a patentee later sells, and fails to mark, products which do practice the invention, the marking statute does not bar recovery of damages during the period in which there was no duty to mark. Thus, even if § 287 is later triggered, recovery will not be barred for the time period during which § 287 was not triggered.") (emphasis added).

Respectfully submitted,
Colin Cabral

Colin G. Cabral
Senior Litigation Counsel

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Los Angeles, CA 90067-3206
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EXHIBIT I

Chow, Yue-Han

From: Chow, Yue-Han
Sent: Tuesday, October 21, 2014 8:02 PM
To: Celia_Choy@nysd.uscourts.gov; RakoffNYSDChambers@nysd.uscourts.gov
Cc: Adrea-Litigation; Bauer, Steven M.; Ederer, Louis S.; Sharifahmadian, Ali R.; Cabral, Colin G.; Arni, Sarah Brackney
Subject: Adrea, LLC v. Barnes & Noble, Inc., et al., No. 13-cv-4137 (JSR)

Dear Ms. Choy:

Barnes & Noble reiterates its position that Instruction No. 12 of the Court's Instructions of Law to the Jury, as provided to the parties this morning, should be given to the jury as currently written. Specifically, the jury should be instructed: "For the '501 and '703 patents, however, damages should run from March 29, 2012 through the date of your verdict."

First, Plaintiff is incorrect that the marking statute permits them to parse the damages period in the manner suggested. To the contrary, the plain language of Section 287 states that, in the event of failure to mark, "damages may be recovered only for infringement occurring after [actual] notice." 35 U.S.C. § 287(a). Based on the clear statutory language, plaintiff may only recover damages for infringement occurring after actual notice, March 29, 2012. Adrea cites only three district court cases, none of which are binding on this Court, none of which have been affirmed by the Federal Circuit, and all of which are contrary to the plain language of Section 287. In addition, each of these cases is distinguishable, because they address situations of a patentee without an applicable product. That is not the case here, because the Amazon Settlement addressed past infringing products and converted them to noninfringing products by virtue of the Amazon license. In situations such as this, where there was a product in existence (the Amazon products), the plain language of the statute means that damages cannot be obtained with a failure to mark. That is the holding of *Konstant Prods. Inc. v. Frazier Indus. Co.*, 1992 WL 404224 (N.D. Ill. Sept. 18, 1992), which is applicable to the facts here where the Amazon license covers past, present, and future products practicing the patents in suit.

Second, to the extent that the Court adopts plaintiff's position, Barnes & Noble should be permitted to enter JTX 034, the cross-license agreement between Discovery and Sony, into evidence. That cross-license agreement, which was entered into on August 25, 2010, as part of the formation of Adrea, licenses the '501 patent to Sony. Sony makes e-readers pursuant to that license agreement; indeed, Adrea was formed in part as a result of Discovery's allegations that Sony was infringing its patents. B&N raised this cross-license in relation to marking in its summary judgment papers and in the initial draft of its marking jury instruction. Because the Court's jury instruction this morning adopted B&N's position that damages were not available for the '501 patent and the '703 patent prior to March 29, 2012, based on the Amazon agreement, B&N did not move the cross-license into evidence. Therefore, even under plaintiff's construction, the applicable date for splitting the damages period is August 25, 2010 for the '501 patent, not November 10, 2011.

Third, below is B&N's statement of the sales in each of the relevant periods. Again, B&N's position is that damages are only available beginning March 29, 2012. The breakdown below reflects the division if the Court accepts Adrea's position.

For the '501 patent:

- Dec. 2009-Aug. 2010: 767,001 units sold = $30,680.04
- Sept. 2010-Mar. 2012: 5,964,590 units sold -- no damages available due to Sony/Amazon failure to mark
- Apr. 2012-June 2014: 5,232,016 units sold = $209,280.64

For the '703 patent:

- Dec. 2009 - Oct. 2011: 4,309,879 units sold = $86,196.58
- Nov. 2011 - Mar. 2012: 2,421,712 units sold -- no damages available due to Amazon failure to mark (B&N agrees with plaintiff that this is the correct number of units sold)
- Apr. 2012 - June 2014: 5,232,016 units sold = $104,640.32

Regards,
Yue-Han Chow

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Arnold & Porter LLP
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New York, NY 10022-4690

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EXHIBIT J

Ederer, Louis S.

From: Celia_Choy@nysd.uscourts.gov
Sent: Tuesday, October 21, 2014 8:50 PM
To: Cabral, Colin G.; Bauer, Steven M.; Ederer, Louis S.; Sharifahmadian, Ali R.
Subject: ADREA v. B&N, 13cv4137

Dear Counsel:

Below is a message from Judge Rakoff:

The Court thanks the parties for their excellent submissions this evening. Although there are good arguments on both sides, the Court concludes in the end, that the change in the charge requested by plaintiff must be denied, essentially for the reasons stated in defendants' response. Because this is a close question, if the issue is not mooted by the jury's verdict, the Court will likely write a short opinion elaborating the reasons for its decision.

Regards,

Celia Choy
Law Clerk to the Hon. Jed S. Rakoff
U.S. District Court for the Southern District of New York
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street Room 1340
New York, NY 10007
(212) 805-0401

EXHIBIT K

Filed Under Seal Pursuant
to the Protective Order

EXHIBIT L

Chow, Yue-Han

From: Chow, Yue-Han
Sent: Sunday, October 19, 2014 6:57 PM
To: 'Cabral, Colin G.'; Cox, Brendan S.; Adrea-Litigation
Cc: Sharifahmadian, Ali R.; Ederer, Louis S.; Berta, Michael A.; Shin, Susan L.; Arni, Sarah Brackney
Subject: RE: ADREA v. B&N - Deposition Designations

Colin,

Below is a list of the page-line numbers of the designations that we are keeping. We tried to keep in what we believe are your corresponding counterdesignations. In the videos, we cut the in-line objections – if those objections are sustained, then the question and answer would be cut from the video.

Regards,
Yue-Han

Rosenstock

7:9-9:19
12:2-13:6
25:25-27:13
27:16-30:6
36:4-37:22
38:10-39:14
76:4-5
76:7-12
76:14
82:19-83:18

Ambwani

5:9-10
5:13-15
7:14-20
12:22-13:4
16:12-15
16:17-20
23:16-24:15
26:1-27:3
29:19-30:16
42:20-43:2
43:16-45:15
47:25-48:10
52:22-53:2
54:8-54:18
55:14-22
58:14-59:5
63:16-23
64:25-65:2

68:4-22
83:14-19
85:21-86:14
90:13-92:14
101:18-21
105:15-106:18
114:2-115:10
115:14-116:9
123:1-124:15
132:9-16
139:3-140:9
142:23-143:6
143:16-144:4
146:5-7
154:13-14
154:22-155:1
155:24-156:8
204:18-205:14
220:2-6
295:4-296:17
297:19-298:12

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From: Cabral, Colin G. [mailto:CCabral@proskauer.com]
Sent: Sunday, October 19, 2014 5:17 PM
To: Chow, Yue-Han; Cox, Brendan S.; Adrea-Litigation
Cc: Sharifahmadian, Ali R.; Ederer, Louis S.; Berta, Michael A.; Shin, Susan L.; Arni, Sarah Brackney
Subject: RE: ADREA v. B&N - Deposition Designations

Yue-Han:

Please send us revised transcripts indicating what designations have been removed. We will need this to determine whether we can drop any of our counter-designations.

Thanks,
Colin

Colin G. Cabral
Senior Litigation Counsel

Proskauer

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From: yue-han.chow@aporter.com [mailto:yue-han.chow@aporter.com]
Sent: Sunday, October 19, 2014 4:56 PM
To: Cabral, Colin G.; Cox, Brendan S.; Adrea-Litigation
Cc: ali.sharifahmadian@aporter.com; louis.ederer@aporter.com; michael.berta@aporter.com; susan.shin@aporter.com; sarah.arni@aporter.com
Subject: ADREA v. B&N - Deposition Designations

Counsel,

Defendants have cut down their deposition designations for Rosenstock and Ambwani. Attached are the current video cuts for these witnesses. Depending on how Judge Rakoff rules on the objections tomorrow, these videos may need to be recut.

Regards,
Yue-Han

File(s) will be available for download until **02 November 2014**:

File: ROSENSTOCK VIDEO.wmv, 48,077.76 KB [Fingerprint: bd8ff6c86ca62c253830ce29aeb46db6]
File: AMBWANI VIDEO.wmv, 70,114.58 KB [Fingerprint: 8acf7a60d0d48633fd9bac45c7061a12]

EXHIBIT M

Filed Under Seal Pursuant
to the Protective Order

EXHIBIT N

Filed Under Seal Pursuant
to the Protective Order

EXHIBIT O

Filed Under Seal Pursuant
to the Protective Order

EXHIBIT P

Filed Under Seal Pursuant
to the Protective Order

EXHIBIT Q

Filed Under Seal Pursuant
to the Protective Order